UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

)	
In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, et al.,)	Chapter 11
)	
Debtors.)	Jointly Administered
)	•

ORDER GRANTING THE RESCAP BORROWER CLAIMS TRUST'S SEVENTIETH OMNIBUS OBJECTION TO CLAIMS (RES JUDICATA BORROWER CLAIMS)

Upon the seventieth omnibus objection to claims, dated July 2, 2014 (the "Objection," ECF Doc. # 7222)¹ of The ResCap Borrower Claims Trust (the "Trust") established pursuant to the terms of the confirmed Plan filed in the above-referenced Chapter 11 Cases, as successor in interest to the Debtors for Borrower Claim matters, seeking entry of an order, pursuant to section 502(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure, and this Court's order approving procedures for the filing of omnibus objections to proofs of claim (the "Procedures Order," ECF Doc. # 3294), disallowing and expunging the Res Judicata Borrower Claims on the basis that such claims are invalid under principles of res judicata, all as more fully described in the Objection; and it appearing that this Court has jurisdiction to consider the Objection pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Objection having been provided, and it appearing that no other or further notice need be provided; upon

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

consideration of the Objection and the Declaration of Lauren Graham Delehey and the Declaration of Norman S. Rosenbaum, annexed to the Objection as Exhibit 2 and Exhibit 3, respectively; and the Court having found and determined that the relief sought in the Objection is in the best interests of the Debtors' estates, the Debtors' creditors, and all parties in interest and that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and the Court having determined that the Objection complies with the Borrower Claim Procedures set forth in the Procedures Order; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Objection is granted to the extent provided herein; and it is further

ORDERED that, pursuant to section 502(b) of the Bankruptcy Code, the claims listed on Exhibit A annexed hereto (collectively, the "Res Judicata Borrower Claims") are hereby disallowed and expunged in their entirety with prejudice; and it is further

ORDERED that Kurtzman Carson Consultants LLC, the Debtors' claims and noticing agent, is directed to disallow and expunge the Res Judicata Borrower Claims identified on the schedule attached as <u>Exhibit A</u> hereto so that such claims are no longer maintained on the Debtors' Claims Register; and it is further

ORDERED that the Trust is authorized and empowered to take all actions as may be necessary and appropriate to implement the terms of this Order; and it is further

ORDERED that notice of the Objection, as provided therein, shall be deemed good and sufficient notice of such objection, and the requirements of Bankruptcy Rule 3007(a), the Case Management Procedures entered on May 23, 2012 [Docket No. 141], the Procedures Order, and the Local Bankruptcy Rules of this Court are satisfied by such notice; and it is further

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ORDERED that this Order has no res judicata, estoppel, or other effect on the

validity, allowance, or disallowance of any claim not listed on Exhibit A annexed to this Order,

and the Trust's and any party in interest's rights to object on any basis are expressly reserved

with respect to any such claim not listed on Exhibit A annexed hereto; and it is further

ORDERED that this Order shall be a final order with respect to each of the Res

Judicata Borrower Claims identified on Exhibit A, annexed hereto, as if each such Res Judicata

Borrower Claim had been individually objected to; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all

matters arising from or related to this Order.

IT IS SO ORDERED.

Dated: September 8, 2014

New York, New York

/s/Martin Glenn

MARTIN GLENN

United States Bankruptcy Judge

3

Exhibit A

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Exhibit A
Seventieth Omnibus Objection – Res Judicata Borrower Claims

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Erick Aguilar Ruiz v. Nationstar Mortgage, LLC, GMAC Mortgage, LLC & Subsidiaries PO Box 49144 Greensboro, NC 27419 Claim No. 3815 Claim No. 3815 Date Filed: 11/09/2012 Mortgage transferred its interest in the loan at issue to Freddie Mac in 2007. Debtor GMAC Mortgage LLC serviced the loan from July 11, 2002 until servicing transferred to Nationstar Mortgage on February 1, 2008. Flick Mortgage Investors, Inc. originated the loan on June 18, 2002. Claimant filed litigation against Debtors and others in the USDC Middle District of NC, Case No. 1- 12CV272 related to a foreclosure by Nationstar. Debtor filed a Motion to Dismiss on May 8, 2012. On August 26, 2013, the Magistrate Judge recommended that the case be dismissed as to the non-Debtors pursuant to the Memorandum Opinion and Recommendations of Unite States Magistrate Judge, a copy of which is annexed to the objection as Exhibit 5-3. The district court signed the order dismissing the case as to non-Debtors on September 25, 2013 pursuant to the Judgment, a copy of which is annexed to the objection as Exhibit 5-4. The Claimant appealed the district court on February 25, 2014 pursuant to a per curiam opinion, a copy of which is annexed to the Objection							
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Nationstar Mortgage, LLC, GMAC Mortgage, LLC & Subsidiaries PO Box 49144 Greensboro, NC 27419 Claim No. 3815 Claim No. 3815 Date Filed: 11/09/2012 General Unsecured General Unsecured General Unsecured Motion Granted as to other Defendants in Related Litigation and Automatic Stay Prevented Decision as to Debtor; Wrong Debtor; Wrong Debtor; Wrong Debtor District of North Start Mortgage Investors, Inc. originated the loan on June 18, 2002. Claimant filed litigation against Debtors and others in the USDC Middle District of NC, Case No. 1- 12CV272 related to a foreclosure by Nationstar. Debtor filed a Motion to Dismiss on May 8, 2012. On August 26, 2013, the Magistrate Judge recommended that the case be dismissed as to the non-Debtors on September 25, 2013 pursuant to the Magistrate Judge, a copy of which is annexed to the objection as Exhibit 5-4. The Claimant appealed the district court on February 25, 2014 pursuant to a per curiam opinion, a copy of which is annexed to the Objection					Mortgage transferred its interest in the loan at issue to Freddie Mac in 2007.		
Nationstar Mortgage, LLC, GMAC Mortgage, LLC & Subsidiaries PO Box 49144 Greensboro, NC 27419 Claim No. 3815 Claim No. 3815 Date Filed: 11/09/2012 General Unsecured General Unsecured General Unsecured Motion Granted as to other Defendants in Related Litigation and Automatic Stay Prevented Decision as to Debtor; Wrong Debtor Date Filed: 11/09/2012 Nationstar Mortgage on February 1, 2008. Flick Mortgage Investors, Inc. originated the loan on June 18, 2002. Claimant filed litigation against Debtors and others in the USDC Middle District of NC, Case No. 1- 12CV272 related to a foreclosure by Nationstar. Debtor filed a Motion to Dismiss on May 8, 2012. On August 26, 2013, the Magistrate Judge recommended that the case be dismissed as to the non-Debtors on September 25, 2013 pursuant to the Magistrate Judge, a copy of which is annexed to the objection as Exhibit 5-4. The Claimant appealed the district court on February 25, 2014 pursuant to a per curiam opinion, a copy of which is annexed to the Objection		4.00.000					
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Greensboro, NC 27419 Litigation and Automatic Stay Prevented Date Filed: 11/09/2012 Date Filed: 12/09/2012 Litigation and Automatic Stay Prevented Debtor Litigation and Automatic Stay Prevented Decision as to Debtor; Wrong Debtor Litigation and Automatic 2012. On August 26, 2013, the Magistrate Judge recommended that the case be dismissed as to the non-Debtors pursuant to the Memorandum Opinion and Recommendations of Unite States Magistrate Judge, a copy of which is annexed to the objection as Exhibit 5-3. The district court signed the order dismissing the case as to non-Debtors on September 25, 2013 pursuant to the Judgment, a copy of which is annexed to the objection as Exhibit 5-4. The Claimant appealed the district court decision, and the court of appeals affirmed the judgment of the district court on February 25, 2014 pursuant to a per curiam opinion, a copy of which is annexed to the Objection	220 & 5005.0.0.10				Claimant filed litigation against Debtors and others in the USDC Middle District of NC, Case No. 1-		
Automatic Stay Prevented Decision as to Date Filed: 11/09/2012 Date Filed: 12/09/2012 Automatic Stay Prevented Decision as to Debtor; Wrong Debtor Debtor Automatic Stay Prevented Decision as to Decision as to Debtor; Wrong Debtor Debtor The non-Debtors pursuant to the Memorandum Opinion and Recommendations of Unite States Magistrate Judge, a copy of which is annexed to the objection as Exhibit 5-3. The district court of signed the order dismissing the case as to non-Debtors on September 25, 2013 pursuant to the Judgment, a copy of which is annexed to the objection as Exhibit 5-4. The Claimant appealed the district court decision, and the court of appeals affirmed the judgment of the district court on February 25, 2014 pursuant to a per curiam opinion, a copy of which is annexed to the Objection	PO Box 49144			Related	,		
Claim No. 3815 Prevented Decision as to Date Filed: 11/09/2012 Date Filed: 11/09/2012 Debtor; Wrong Debtor Debtor Debtor Debtor Magistrate Judge, a copy of which is annexed to the objection as Exhibit 5-3. The district court signed the order dismissing the case as to non-Debtors on September 25, 2013 pursuant to the Judgment, a copy of which is annexed to the objection as Exhibit 5-4. The Claimant appealed the district court decision, and the court of appeals affirmed the judgment of the district court on February 25, 2014 pursuant to a per curiam opinion, a copy of which is annexed to the Objection	Greensboro, NC 27419			J			
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Date Filed: 11/09/2012 Debtor; Wrong Debtor Debtor; Wrong Debtor Debtor Debtor Judgment, a copy of which is annexed to the objection as Exhibit 5-4. The Claimant appealed the district court decision, and the court of appeals affirmed the judgment of the district court on February 25, 2014 pursuant to a per curiam opinion, a copy of which is annexed to the Objection	Claim No. 3815						
Debtor district court decision, and the court of appeals affirmed the judgment of the district court on February 25, 2014 pursuant to a per curiam opinion, a copy of which is annexed to the Objection	Date Filed: 11 /00 /2012				9		
February 25, 2014 pursuant to a per curiam opinion, a copy of which is annexed to the Objection	Date Fileu. 11/09/2012			, ,			
				Debtoi			
as <u>Exhibit 5-5</u> .					as Exhibit 5-5.		

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Exhibit A Seventieth Omnibus Objection – Res Judicata Borrower Claims

Name of Claimant; Claim Number; Date Filed	Claim Amount	Asserted Debtor Names and Case Number	Reason for Disallowance	Reason(s) for Disallowance	Asserted Case Number	Court Where Final Judgment Issued
				The proof of claim and response received from the Claimant with regard to the Request Letter sent by the Debtors states that the Claimant is entitled to a claim for the entire amount he paid on his mortgage because the Debtors have no claim to the property that secured the mortgage. This is identical to the allegations made in the complaint in the referenced litigation, which stated that the Debtor had no claim to the property and therefore wrongfully foreclosed. The magistrate judge dismissed the complaint against the non-Debtor co-defendants for failure to state a cause of action under FRCP Rule 12(b)(6). The district court noted that the complaint did not particularize claims against the different co-defendants, and as a result decided the claims against all the non-Debtor defendants as a group. Additionally, while the claim was filed against Residential Capital, LLC, the litigation was against GMAC Mortgage. As a result, the claim was filed against the wrong debtor. GMAC Mortgage is in privity with defendant Nationstar for purposes of res judicata because Nationstar took over servicing of the loan at issue from GMAC Mortgage.		
Erick A. Ruiz v. Nationstar Mortgage, LLC & GMAC Mortgage, LLC & SubsidiariesPO Box 49144 Greensboro, NC 27419 Claim No. 2573 Filed: 11/06/2012	\$51,300.00 Secured \$32,550.00 General Unsecured	GMAC Mortgage, LLC 12-12032	Dispositive Motion Granted as to other Defendants in Related Litigation and Automatic Stay Prevented Decision as to Debtor	Debtor GMAC Mortgage LLC serviced the loan from July 11, 2002 until servicing transferred to Nationstar Mortgage on February 1, 2008. Flick Mortgage Investors, Inc. originated the loan on June 18, 2002. Claimant filed litigation against Debtors and others in the USDC Middle District of NC, Case No. 1-12CV272 related to a foreclosure by Nationstar. Debtor filed a Motion to Dismiss on May 8, 2012. On August 26, 2013, the Magistrate Judge recommended that the case be dismissed as to the non-Debtors pursuant to the <i>Memorandum Opinion and Recommendations of Unite States Magistrate Judge</i> , a copy of which is annexed to the objection as Exhibit 5-3. The district court signed the order dismissing the case as to non-Debtors on September 25, 2013 pursuant to the <i>Judgment</i> , a copy of which is annexed to the objection as Exhibit 5-4. The Claimant appealed the district court decision, and the court of appeals affirmed the judgment of the district court on February 25, 2014 pursuant to a per curiam opinion, a copy of which is annexed to the Objection as Exhibit 5-5. The proof of claim and response received from the Claimant with regard to the Request Letter sent by the Debtors states that the Claimant is entitled to a claim for the entire amount he paid on his mortgage because the Debtors have no claim to the property that secured the mortgage. This is identical to the allegations made in the complaint in the referenced litigation, which stated that the Debtor had no claim to the property and therefore wrongfully foreclosed. The magistrate judge dismissed the complaint against the non-Debtor co-defendants for failure to state a cause of action under FRCP Rule 12(b)(6). The district court noted that the complaint did not particularize claims against the different co-defendants, and as a result decided the	1-12CV272	USDC Middle District of North Carolina

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Exhibit A
Seventieth Omnibus Objection – Res Judicata Borrower Claims

		Asserted Debtor				
Name of Claimant;		Names and	2 (
Claim Number; Date Filed	Claim Amount	Case Number	Reason for Disallowance	Reason(s) for Disallowance	Asserted Case Number	Court Where Final Judgment Issued
				claims against all the non-Debtor defendants as a group.		Ū
				GMAC Mortgage is in privity with defendant Nationstar for purposes of res judicata because Nationstar took over servicing of the loan at issue from GMAC Mortgage.		
James and Christina Blanton Bearman Law James Blanton VS GMAC Mortgage Company, Everhome Mortgage, Mortgage Investors Corp. 820 North 12th Avenue Pensacola, FL 32501 Claim No. 989 Filed: 10/05/2012	UNLIQUIDATED General Unsecured	GMAC Mortgage, LLC 12-12032	Dismissed with Prejudice; Dispositive Motion Granted as to other Defendants in Related Litigation and Automatic Stay Prevented Decision as to Debtor	Mortgage Investors Corp. originated the loan on February 23, 2004. Debtor GMAC Mortgage purchased the loan from Mortgage Investors Corp. and subsequently sold its interest in the loan to Ginnie Mae on or about September 24, 2008. Debtor GMAC Mortgage serviced the loan from October 4, 2004 until servicing transferred to Everhome Mortgage Company on Nov 8, 2008. Claimant had previously filed the same litigation against the same parties in the First Judicial District Circuit Court Escambia County, FL, Case No. 2008-CA-1763 which was dismissed on summary judgment as to Debtor and non-Debtors on July 18, 2011. Claimants then filed litigation against Debtors and others in the Circuit Court in Escambia County, FL, Case No. 2012-CA264. Debtor filed a motion to dismiss on March 12, 2012 on the grounds that the cause of action was barred by res judicata because it was identical to the litigation that was dismissed as to the Debtor in 2011. The court granted summary judgment as to non-Debtors, Everhome Mortgage and Mortgage Investors Corp., on October 12, 2012 pursuant to two Final Judgment orders, copies of which are attached to the Objection as Exhibit 5-6 and Exhibit 5-7. The court granted summary judgment to non-Debtor co-defendant Everhome on the basis that the cause of action was barred by res judicata due to the litigation in 2011, which it was also a party to. The Claimants did not appeal these decisions. Claimants attached a copy of the complaint from the 2012 litigation to the proof of claim. GMAC Mortgage is in privity with defendant Mortgage Investors Corp. for purposes of res judicata because Mortgage Investors Corp. was the original lender of the loan at issue and held the loan while GMAC Mortgage serviced the loan.	2008-CA-1763 2012-CA264	First Judicial District Court Escambia, Florida
				GMAC Mortgage is in privity with defendant Everhome for purposes of res judicata because GMAC Mortgage transferred its right to service the loan to Everhome in 2008.		
Thomas Demelio	\$4,900,000.00 General	GMAC Mortgage,	Dispositive Motion	Debtors' involvement with Claimant's loan, as related to the litigation attached to the POC, was limited to Debtors' roles as servicer and investor of the second lien loan. Citizens Home Loan,	3:12-cv-00081	USDC for the Middle District of
Thompson Law Group, LLC PO Box 53484 Atlanta, GA 30355-1484	Unsecured	LLC 12-12032	Granted as to other Defendants in Related Litigation and	Inc. originated the loan on August 20, 2007. Debtor Residential Funding Company, LLC purchased the loan from Citizens Home Loan and is the current investor. Debtor GMAC Mortgage LLC serviced the second lien loan from August 30, 2007 until servicing transferred to Ocwen Loan Servicing, LLC on February 16, 2013.		Georgia
Claim No. 5641			Automatic Stay	Claimant's litigation, attached to the proof of claim, relates to a foreclosure action involving the		
Filed: 11/16/2012			Prevented Decision as to Debtor; General No	first lien loan which Debtor did not have an interest in and asserts allegations related to the ability of MERS to foreclose. The Claimant filed litigation against Debtor Residential Funding Company, LLC and others on June 4, 2012 in Walton County, Georgia. The defendants removed to the U.S. District Court for the Middle District of Georgia on June 19, 2012 (Case No. 3:12-cv-		

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Exhibit A Seventieth Omnibus Objection – Res Judicata Borrower Claims

		Asserted				
		Debtor				
Name of Claimant;		Names and				
Claim Number; Date		Case	Reason for		Asserted Case	Court Where Final
Filed	Claim Amount	Number	Disallowance	Reason(s) for Disallowance	Number	Judgment Issued
			Liability; Wrong	00081). The Debtors filed a Notice of Bankruptcy on August 10, 2012. On January 29, 2013, the		
			Debtor;	district court dismissed the case as to non-Debtor defendants for failure to state a claim upon which relief could be granted pursuant to the <i>Order on Defendants' Motion to Dismiss</i> , a copy of		
			Estoppel by Waiver	which is annexed to the Objection as Exhibit 5-8. The Claimant then appealed that decision to		
			vvalvei	the 11th Circuit Court of Appeals on March 1, 2013. The court of appeals affirmed the decision of		
				the district court on November 13, 2013 in an order, a copy of which is annexed to the Objection		
				as Exhibit 5-9. Debtor's involvement in the lawsuit was only in connection with acting as investor		
				of the second lien loan that was foreclosed out by the first lien holder on November 1, 2011. The		
				foreclosure removed the Debtors' second lien on the loan, but the Debtors' continued to service		
				the property on an unsecured basis.		
				In box 2 on the proof of claim ("basis for claim") Claimant lists "wrongful foreclosure due to lack		
				of standing and lack of ownership, plus fraudulent misrepresentation and fraud." This is identical		
				to the allegations made in the complaint in the litigation, which the Claimant attached to the proof of claim.		
				Additionally, Debtor has no liability for Claimant's claim because Claimant waived any claim		
				against Debtor by not scheduling this claim in his bankruptcy that was filed on March 5, 2013. In		
				fact this property was removed from the amended schedules acknowledging the foreclosure that		
				occurred in 2011 and placing a value to the estate at \$0.		
				Additionally, while the claim was filed against GMAC Mortgage, the litigation was against		
				Residential Funding Company, LLC. As a result, the claim was filed against the wrong debtor.		
				GMAC Mortgage is in privity with defendant Citizen Home Loans, Inc. for purposes of res judicata		
				because Citizen Home Loans, Inc. was the original lender of the loan at issue serviced by GMAC		
				Mortgage. GMACM Mortgage also purchased the loan from Citizen Home Loans, Inc.		
Peter Zepperio	\$5,000,000.00	GMAC	Dispositive	Debtor Homecomings Financial Network originated the loan on October 11, 2002. Debtor, GMAC	2:12CV-05357	USDC for the
Patricia Rodriguez Esq.	General	Mortgage,	Motion	Mortgage, LLC purchased the loan from Homecomings Financial and subsequently transferred its		Central District of
1001 Huntington Drive	Unsecured	LLC	Granted as to	interest in the loan to Fannie Mae on or about November 24, 2009. Debtor Homecomings		California
1961 Huntington Drive, Suite 201		12-12032	other Defendants in	Financial serviced the loan from October 11, 2002 until servicing transferred to GMAC Mortgage, LLC on or about July 1, 2009. GMAC Mortgage LLC serviced the loan until servicing transferred to		
Alhambra, CA 91801			Related	GreenTree Servicing on February 1, 2013.		
amsia, SA 31001			Litigation and	Section Sectioning of February 1, 2013.		
Claim 3892			Automatic Stay	Claimant filed litigation against Debtors and others, including Fannie Mae, on June 20, 2012 in		
			Prevented	the Federal District Court for the Central District Court of California (Case No. 2:12CV-05357) for		
Filed 11/09/2012			Decision as to	various causes of action, including Quite Title. The case was dismissed with prejudice as to non-		
			Debtor	Debtor defendants Fannie Mae and MERS on February 13, 2013 pursuant to the <i>Order Granting</i>		
				Motion to Dismiss, a copy of which is annexed to the Objection as Exhibit 5-10. The court		
				dismissed some causes of action for failure to state a claim upon which relief could be granted		

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Exhibit A Seventieth Omnibus Objection – Res Judicata Borrower Claims

Name of Claimant; Claim Number; Date		Asserted Debtor Names and Case	Reason for		Asserted Case	Court Where Final
Filed	Claim Amount	Number	Disallowance	Reason(s) for Disallowance while other causes of action were dismissed because they were barred by the statute of	Number	Judgment Issued
				limitation. Claimant appealed that order to the Ninth Circuit Court of Appeals on March 11, 2013. The appeal is being handled by Greentree as current servicer of Claimant's loan (with title company). Plaintiff voluntarily dismissed GMAC Mortgage, Homecomings Financial and ETS		
				without prejudice on April 18, 2013. No Debtor is a party to the appeal. Lawsuit alleged lack of standing to foreclose. Property has not been foreclosed yet and Debtors have no interest in any future foreclosure proceedings.		
				The basis for the claim listed in box 2 on the proof of claim is "litigation claim" and the Claimant attached a copy of the first page of the complaint.		
				GMAC Mortgage is in privity with defendant Fannie Mae for purposes of res judicata because GMAC Mortgage transferred its interest in the loan to Fannie Mae and GMAC Mortgage acted as servicer of the loan while it was held by Fannie Mae.		